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ABSTRACT

This booklet offers trustees of institutions of higher education a guide to the ethical principles upon which the institution should base its decisions. An introductory section offers actual examples of unethical decisions by single officials for which the institution was responsible. The following sections each explain a principle and offer questions for consideration. The sections address: (1) the ladder of compliance, including federal, state, and local law; (2) the institution's corporate charter and bylaws; (3) accrediting and coordinating agencies; (4) contracts and obligations; and (5) accountability and self-regulation. The booklet concludes with four specific suggestions for the board: first, include in bylaws and policy documents an explicit statement mandating accuracy in all self-reporting and self-descriptions and acknowledging that the institution must be truthful in all dealings; second, make clear to the chief executive that the board expects to be given truthful, accurate data; third, conduct a review of the charter, bylaws, and board policy compendium; and, fourth, work with the chief executive officer to recognize and disapprove of any infractions or exceptions to the board's policy of integrity and accuracy. (DB)

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BOARD BASICS

THE FUNDAMENTALS

INSTITUTIONAL ETHICS AND VALUES

BY THOMAS E. CORTS

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ASSOCIATION OF GOVERNING BOARDS OF UNIVERSITIES AND COLLEGES

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Thomas E. Corts is president of Samford University, Alabama's largest privately supported institution of higher learning. He has served as president since 1983. Previously, Corts was president of Wingate College in North Carolina for nine years.

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The *Board Basics* Series is intended to strengthen the effectiveness of governing boards and trustees by providing information about board roles and responsibilities. This series of publications is intended to inform debate and discussion, not to represent or imply endorsement by the association or its members. Additional copies are available by calling the AGB Publications Department at **800/356-6317**.

Institutional Ethics and Values

Trusteeship of a college or university is at once a high honor and a serious responsibility. Often, trustee candidates can be so honored to be invited to join a board that they fail to fully understand the legal, ethical, moral, and fiduciary responsibilities involved in trusteeship.

Increasingly, organizations ask special board committees to study these issues, institute written codes and pledges, and design orientation sessions to clarify roles and responsibilities. Rarely discussed, however, is the board's responsibility to see that the institution complies with the law, represents itself truthfully, deals fairly with individuals, treats the environment with respect and care, and takes seriously its leadership role in the institution's pursuit and guardianship of truth.

Because colleges are nonprofit and their board members uncompensated, it is easy to think that a board's integrity derives automatically from the nature of the academic process. Still, at America's 3,500 tax-exempt, accredited postsecondary institutions, there are some 50,000 trustees. Some are elected by self-perpetuating boards, some chosen by churches and religious orders, some publicly elected or governmentally appointed—but all are only human and subject to the same mistakes, excesses, temptations, and sins sometimes found among for-profit corporate directors. Money, greed, pride, unbridled ambition—these human traits go wherever people go, even into college and university boardrooms. Identification with the nonprofit sector does not in itself bestow virtuous character.

Like businesses, colleges and universities are vulnerable to people with undesirable motives or a low threshold for temptation. But some infractions seem to be acts of the institution, not just of unscrupulous individuals.

Regardless of whether a person may be formally authorized by a board of trustees or its chief executive, the actions of a single institutional official often can appear deliberate. More often than not, the institution is responsible for such "official" conduct. Consider these true examples:

- Having announced that all available spaces in an entering class are filled, a university agrees to admit another student after the student's parents make a substantial contribution.

- An institutional executive and the institution's auditor repeatedly assure that a bank loan to the executive is being repaid progressively when, in fact, not a dollar has been paid back.

- An officer of a university signs a lease for the institution, claiming sufficient authority, when bylaws clearly retain that authority for the board.

- Several colleges publicly acknowledge fabricating data about admissions applications, graduation rates, and average admissions test scores to achieve higher marks in magazine publishers' competitive rankings.

- An institution whose conference membership and self-declaration require that it give no athletic scholarships creates new "leadership" scholarships that go to students with demonstrated athletic prowess.

While colleges and universities serve lofty purposes in our society, such cases confirm they are not insulated from serious infractions committed in their corporate names or from employing persons capable of serious moral and ethical lapses.

Integrity has a short shelf-life. An institution's reputation—the result of effective trusteeship earned over a long period of time and with much volunteer devotion—can be canceled out quickly by ethical missteps or breaches of truth. Bad news travels twice as fast as good news and is remembered twice as long. Moreover, legal sanctions against a college or university and board members are expensive and embarrassing.

For example, recent federal laws make it possible for board members of charitable organizations to be fined up to $10,000 and to repay thousands of dollars if the IRS finds infractions. Whereas formerly the IRS's only sanction was to terminate a charity's tax exemption, it now can force repayment of major sums and assess fines in cases of misdeeds in which someone appears to have gained "excess benefit." Both the institution and the recipient of "excess" compensation can be fined.

WHILE COLLEGES AND UNIVERSITIES SERVE LOFTY PURPOSES IN OUR SOCIETY, CASES CONFIRM THEY ARE NOT INSULATED FROM SERIOUS INFRACTIONS COMMITTED IN THEIR CORPORATE NAMES.

Every board member, the board as an entity, and the institution should have as a basic concern the responsibility to develop and maintain a reputation for ethical propriety. These questions can serve as a starting point:

- Does the board have an orientation program to acquaint new trustees with their general responsibilities? With their individual ethical and moral responsibilities?
- Does each trustee have ready access to the institution's mission statement?
- Does the mission statement regularly come to the board's attention, either directly or indirectly? Has the board formally reconsidered the mission statement within the past several years?
- Has the board discussed what it means to be a trustee of that particular institution?
- Does the board have an explicit statement of its commitment to honesty and integrity? Is the policy simply "on the books," or is it periodically reexamined and reaffirmed?

EVERY BOARD MEMBER, THE BOARD AS AN ENTITY, AND THE INSTITUTION SHOULD HAVE AS A BASIC CONCERN THE RESPONSIBILITY TO DEVELOP AND MAINTAIN A REPUTATION FOR ETHICAL PROPRIETY.

- Has the board made the chief executive, principal officers, and members of the larger community aware of this policy? Does the institutional community appear to have confidence in and respect for the board's commitment to integrity?
- Has the board or a board committee reviewed sensitive policies to ensure they comply with the institution's commitment to integrity?
- Has the board discussed specific moral or ethical cases or concerns that may have arisen at the institution or at similar institutions?

THE LADDER OF COMPLIANCE. Colleges and universities do not exist in a vacuum; they operate within the scope of their locales—from immediate neighborhoods to states and regions. As corporate entities entrusted and empowered to encourage responsible citizenship, they do so best by complying with laws and keeping faith with commitments. The rules that affect an institution take various forms:

- laws imposed by appropriate civil bodies;
- the institution's own corporate and bylaw documents;
- requirements of membership in organizations with which the institution chooses to associate;
- contracts and commitments transacted with others; and
- internal rules and policies that trustees and institutional personnel formulate and to which they agree, along with self-imposed standards of morality, decency, and propriety.

These areas warrant closer examination.

Federal, State, and Local Law. A first level of responsibility for all institutions is to observe federal, state, and local law. Federal law governs the tax-exempt nature of institutional operations, the tax-deductibility of contributions, criteria for qualifying for federal-assistance programs, handling and disposing hazardous substances, and environmental safety. Recently, these areas have come to involve a host of reporting requirements. On occasion, federal authorities have taken legal action against institutions, boards, and their leadership, as Congress and regulators have expressed heightened interest in monitoring colleges and universities.

Most colleges and universities are incorporated as legal entities under the laws of a particular state. Some independent and state-supported institutions were formed by specific legislative action and can trace their roots to enabling statutes. With others, original incorporation may have been necessary to establish charitable status, hold property, or borrow funds. Many states now have financial-assistance programs for students at independent institutions, and most now have some form of data collection involving all higher education statewide. Other examples of effects of state laws upon institutions include the following: issuance of bonds and instruments of debt, purchasing procedures, contribution deductions for state tax purposes, payment of sales taxes (on student meal plans, for example), and personnel benefits such as unemployment compensation and worker's compensation.

Zoning and land-use regulations, building codes, and fire and police protection are among the most common ways local governments interact with colleges and universities. Taxation or payments in lieu of other forms of assessment have been hotly disputed in local jurisdictions. Many institutions make binding commitments to local government agencies on sports facilities, traffic access and egress, and bonding authorities.

Of course, all colleges and universities are subject to legal action. Concepts of "charitable immunity," which once made it difficult to file suit against a charity, generally have dissipated. Today, a college or university may be involved in dozens of legal actions at any given time. This makes it more important than ever for trustees to be sensitive to legal issues and ethics and to have some idea of the magnitude and scope of legal involvement. Board members or leaders often are cited by name

in legal complaints, and boards sometimes bear the brunt of any adverse judgment, whether financially or in public image. So important are legal actions that a few boards regularly receive charts at meetings summarizing the status of various current actions.

Whether state-supported or independent, a college or university board of trustees has a serious responsibility to abide by federal, state, and local law, and board members should understand how various laws affect (or might affect) the institution.

Questions to Consider

- Is the board familiar with the range of federal, state, and local laws that require specific accountability on the part of the institution and its board? Is the board aware of the consequences of noncompliance with such laws?
- Is the board apprised when new federal, state, and local laws or regulations affect the institution? Is the board informed of the consequences of noncompliance with such rules?
- Are legal actions involving the institution reported to the board? To what extent may the institution initiate legal action or file suit without the explicit approval of the board?
- Do the institution and the board have adequate legal counsel?

CORPORATE CHARTER AND BYLAWS. The corporate charter, normally granted through each state's office of secretary of state, is the institution's official authorization to operate as a corporate entity, and it places the organization in a direct legal relationship to the state. The charter records the purpose or justification for empowering the entity as a tax-exempt corporation. It includes basic outlines of corporate structure and governance as well as procedures for establishing bylaws and for amending the charter and bylaws.

An institution of higher learning is not like a conglomerate or holding company, free to pursue numerous corporate ventures. It must focus on accomplishing the explicit purposes for which the state grants the charter.

The trustees must ensure the organization functions as it has promised; failure to implement those chartered purposes can bring serious consequences. In most states, appropriate public officials have the authority to intervene in the affairs even of an independent institution if the officials can demonstrate that the purposes for which the institution was chartered are being subverted or contravened. In a few cases, such intervention has occurred.

THE TRUSTEES MUST ENSURE THE ORGANIZATION FUNCTIONS AS IT HAS PROMISED; FAILURE TO IMPLEMENT THOSE CHARTERED PURPOSES CAN BRING SERIOUS CONSEQUENCES.

Bylaws are the corporation's rules of operation. In some cases, the charter and bylaws are one document, but when they are separate, bylaws usually are not recorded, while the charter is. In any dispute or legal action, the board's ability to demonstrate its adherence to its own procedures is crucial.

Constant changes in board membership can allow charters and bylaws to become seriously out of date. Often, the board makes incremental changes in the way it works, discovering only years later that the bylaws have not changed to keep up with actual practice. It is common for trustees, for instance, to change the size and authority of an executive committee, the number and tenure of trustees, the composition of committees, or determination of a quorum—and in the process contravene the charter or bylaws.

As boards fine-tune their operating processes, they need to adjust their bylaws accordingly. They also must amend or restate their charters from time to time in accordance with state law. Over the years, the institution's charter and bylaws will accumulate a lengthy paper trail of amendments that need to be documented carefully.

Questions to Consider

- Does each member of the board have an up-to-date copy of the corporate charter and bylaws?
- Does counsel or a committee of the board periodically review the charter and bylaws to ensure that actual practice does not conflict with those documents and that actions mandated by the charter and bylaws are being fulfilled?
- In practice, do trustees refer to the charter and/or bylaws in board discussion or debate?
- Does the institution or its counsel maintain a master file documenting charter and bylaw changes over the years?

ACCREDITING AND COORDINATING AGENCIES. By tradition, higher education in the United States is divided into seven regions over which regional accrediting entities monitor standards and encourage educational vitality. Full membership in one of those regional bodies generally means an institution may call itself "fully accredited." In addition, specialized accrediting entities exsist in professional fields. Still other organizations seek to ensure high standards in particular subjects.

Membership in accrediting bodies is voluntary but requires compliance with standards in such areas as finance, academics, student life and activities, public relations, and fund-raising. A college or university commits to meet those standards and to supply honest and accurate data as a condition of membership.

In addition, many states have coordinating bodies. Some serve only state-supported institutions; others involve both state-supported and independent campuses. Coordinating bodies normally have reporting requirements and other stipulations institutions are expected to meet.

Other membership organizations serve a quasi-accreditating function, with members agreeing to meet certain prerequisites. The National Collegiate Athletic Association, for example, has specific reporting requirements and compliance provisions. Other consortia, athletic conferences, and membership organizations have explicit requirements for members.

For obvious reasons, participation in these organizations can be vital to an institution's credibility. As damaging as it may be to fall short in an area of compliance, it can be even more harmful for an institution's self-reporting to fall short of the truth in an effort to hide noncompliance.

Questions to Consider

- Does the board understand the concept and process of accreditation and its significance in the world of higher education?
- Does the board have a list of all the entities to which the institution must report and with whose requirements it must comply? Is the board aware of the consequences of noncompliance?
- Has the board or an appropriate committee reviewed the major reporting instruments required by regional accreditors or membership organizations?

CONTRACTS AND OBLIGATIONS. Every college and university enters into contracts—written, enforceable agreements formally obligating the institution—with faculty members, residence-hall occupants, consultants, service providers, construction contractors, and many others. In this litigious age, it is unthinkable to enter into such agreements without review by appropriate legal counsel.

Bylaws or board policy documents should identify clearly those individuals who have the authority to obligate the institution, along with any limits on that authority. The board may wish to retain the right to approve major obligations that can materially affect the institution's financial health or potentially damage its reputation or standing. For example, many institutions do not permit an officer of the corporation to borrow funds on behalf of the institution without explicit board approval. Some boards limit the magnitude of financial commitment that can be made without explicit board approval, restrict the maximum term of an obligation to six months or one year, or prohibit any contract that includes "automatic renewal." Some require contracts to have a mediation or arbitration provision to reduce the threat of legal action.

Contractually committing the institution in direct ways and indirectly obligating it in other ways are serious concerns of the board. Top institutional officers should be fully aware of the limits of their authority and of the seriousness of making commitments to which the institution must abide.

CONTRACTUALLY COMMITTING THE INSTITUTION IN DIRECT WAYS AND INDIRECTLY OBLIGATING IT IN OTHER WAYS ARE SERIOUS CONCERNS OF THE BOARD.

Questions to Consider

- Does the board have clearly defined statements authorizing a limited number of individuals to obligate the institution for appropriate financial sums and time periods?
- Do administrative officers, including the chief executive, have written guidelines outlining the constraints on their authority to commit the corporation? Do they understand these constraints?
- Does the institution have appropriate legal representation and procedures that ensure proper legal review of contractual obligations?
- Does the board have defense strategies and insurance to protect members from lawsuits, errors, or omissions?

ACCOUNTABILITY AND SELF-REGULATION. Ambiguous financial procedures can destroy the hard-won reputations of individual board members and the institution. The cornerstone of any board's assurance of financial responsibility is the annual external audit. This is the primary means of verifying the institution's financial results and standing for the board and the public as well as the federal and state governments, accrediting agencies, and sponsoring bodies.

An external certified public accountant conducts the review and issues the audit report. In addition, accounting firms should provide a "management letter" listing any concerns with procedures and management processes. The auditor assures that no funds have been misappropriated or mishandled, evaluates the way funds are accounted for and allocated, examines how money is transferred among funds within an institution, ensures restricted funds are used solely for the purposes for which they were given, and seeks to verify that appropriate approvals and authorizations are in place.

Just as important as the auditor's report is the board's response to the audit. Normally, boards have an audit committee that includes members with expertise in finance and accounting who should review the auditor's report thoroughly. However, trustees should not relegate the responsibility for the audit to one committee; they should insist on receiving the auditor's report before the meeting, and they should use meeting time to review the report. The board should set aside time to do this *with* management and *separate* from management, so if the auditors have any concerns about management, the board can discuss those issues freely.

Many for-profit audit committees also review officers' and employees' compliance with other rules and standards of conduct and periodically ask the external auditor to examine specific areas or transactions. Trustees have significant fiduciary responsibility. They should view the annual external audit as one of their best defenses.

Because trustees and the institution are accountable to many publics, the institution should have provisions for self-regulation in place. The chief form of self-regulation is the board's approved code of ethics and statement of values. If administrators—development officers and athletic directors, for example—believe their primary duty is to generate income without regard for the ethical and moral implications of how that income is raised, an institution's mission may become distorted. Further, income-producing activities may create expenses—tangible or intangible—the institution can ill afford. The board and the institution's officers should be able to rally around explicit statements from the board that enable personnel to be effective within appropriate ethical constraints.

Trustees and top administrative officers also should follow a carefully considered policy that protects against conflicts of interest or even the appearance of conflicts of interest. For a detailed discussion of this topic, see the *Board Basics* publication, "A Guide to Conflict of Interest and Disclosure."

Increasingly, for-profit and nonprofit boards find it useful to have standing committees on board affairs. Surveys show that more than half of the corporate boards in America have formal committees to monitor corporate governance processes, board operations, and the board's weaknesses and strengths. Annually reviewing the board's own activities can provide a convenient way for trustees to contribute their ideas for improvement and change.

Accountability is the fundamental premise upon which nonprofit efforts rely. Trustees must have a clear understanding of their legal responsibilities, remain aware of the interests they represent, and assert themselves collectively in self-regulation that protects the entire board, individual members, and the institution.

Questions to Consider

- Does the board take seriously the annual audit report and any accompanying management letter?
- Does the board have sufficient time to study and review the report and to discuss it with the auditors without management present?
- Does the board of trustees have a code of ethics? Do members complete an annual disclosure statement?
- Does the board have a strong conflict-of-interest policy for its own members, for top administrators, and for key purchasing personnel? Are the institution's primary purchasers aware of the conflict-of-interest policy?
- Is it clear who on the board "decides" possible conflict-of-interest issues?
- Does the board have a committee on board affairs?

TRUSTEES AND TOP ADMINISTRATIVE OFFICERS ALSO SHOULD FOLLOW A CAREFULLY CONSIDERED POLICY THAT PROTECTS AGAINST REAL OR APPARENT CONFLICTS OF INTEREST.

THE INSTITUTION'S SELF-PORTRAIT. A college or university has abundant opportunities to describe itself in both statistical and narrative form. Each year, an institution receives hundreds of requests for data and general information, including IRS filings, enrollment data, admissions standards, acceptance rates, average test scores, graduation rates, scholarships, financial aid, and more. The people and organizations requesting this information include federal and state governments, reporters, public and private agencies, associations, publications that rank colleges and universities—and, of course, current and prospective students, parents, faculty, employees, alumni, donors, and the governing board itself.

Because of the comparative manner in which data may be used, each institution generally wants to "put its best foot forward" in its self-descriptions—sometimes to the point of representing itself inaccurately. Boards of many institutions have been shocked to discover wide discrepancies in the way basic data are reported in different places. While such discrepancies are sometimes explained by ambiguities or variations in the questions (even something as straightforward as "total enrollment" can be counted in many different ways), unexplained variances are all too common.

One analyst who examined the accuracy of universities' self-reporting observed that *institutions became progressively more accurate as the consequences of misinformation became more severe*. He concluded that many institutions seemed to find generalizations sufficient for the press and general public; only slightly greater accuracy characterized reports to most accrediting organizations; defensible data were needed for the NCAA, which has significant sanctions; and strenuous accuracy was the goal for government documents, such as a prospectus for a bond issue, as individuals could come under federal penalties for supplying false information.

Clearly, any willingness to provide inaccurate, exaggerated, or unsupported data would undermine a board's desire to promote a culture of integrity. Trustees should not be involved in daily management of information, but they should impress upon the chief executive and top administrators their commitment to accuracy and integrity in self-reporting. Trustees may wish to review the procedures by which data are checked before they are routinely distributed. They may wish to receive regular reports of certain data to stay informed and to ascertain whether data are consistent and reported precisely. And just as auditing firms often verify financial operations and figures and other operating procedures and data for commercial companies, accounting firms also can verify enrollment, financial aid, and other data for higher education institutions.

Of course, hard data do not constitute the only type of information an institution provides about itself. Colleges and universities should guard against hollow slogans that cannot be substantiated, such as "one of America's finest," "one of the top libraries in the nation," "providing excellence since 1921," and so on. In truth, such statements are probably as devalued as they are exaggerated. Language should not overpower integrity. The most trusted institutions of our society must respect the truth, even when it might hurt.

Questions to Consider

- Is the board certain that processes are in place to ensure the accuracy of self-reported data?
- Do board members see internal and external publications that purport to describe the institution, and do they render judgment on their accuracy?
- Does the board receive enough accurate data to be able to recognize and resist the temptation to exaggerate?
- Has the board candidly discussed the institution's image, self-concept, and public perception? Are these consistent with the mission?

THE BOARD'S RESPONSIBILITY. Trustees must take the lead in safeguarding and promoting a spirit of integrity, accuracy, and honesty throughout the college or university. To promote an institutional culture of integrity, a board may wish to move aggressively and publicly.

Actions to Consider

- Include in bylaws and policy documents an explicit statement mandating accuracy in all self-reporting and self-descriptions and acknowledging that the institution must be truthful in all dealings.

- Make clear to the chief executive that the board expects to be given truthful, accurate data, and for the same to be dispensed in the name of the institution and its board. Invite a consultant or outside adviser (perhaps through the AGB On-Campus Board Education Workshop) to conduct an "integrity audit" to determine whether accurate reporting, self-description, information sharing, and so on, are in fact taking place and are part of the institutional culture.

- Conduct a review with the chief executive and institutional counsel of the charter, bylaws, and board policy compendium to ensure they (1) are consistent within themselves and with key policy documents, (2) reflect current practice, and (3) are consonant with applicable laws.

- Work with the CEO to recognize and disapprove of any infractions or exceptions to the board's policy of integrity and accuracy.

By their very nature, colleges and universities are expected to be institutions of character. Trustees normally are women and men of high ethical standards. But carelessness with facts, inappropriate representations, unwillingness to maintain the institution's commitments, and inconsistencies between comment and actual practice can compromise the character of individual trustees—and the collective character of their institution.

Resources

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BOARD BASICS

This publication is part of **Board Basics**, an AGB series devoted to strengthening the effectiveness of governing boards and trustees. Board Basics comprises several topic clusters—The Fundamentals, Financial Matters, Fund-Raising, Academic Affairs, Leadership, Strategic Decision Making, and Effective Committees—each of which contains several booklets. Several assumptions underlie the series:

- Academic trusteeship grows increasingly ambiguous, and trustees need concise, accessible, and focused information to help them carry out their complex fiduciary and stewardship responsibilities.
- Basic principles of trusteeship remain constant across higher education, regardless of institutional type, size, and mission. The series highlights these general principles to provide trustees with a core of knowledge they can apply to their individual institutions.
- The series addresses the distinguishing characteristics of academic trusteeship, especially as it differs in scope, substance, and focus from corporate directorships and other board service.

AGB and the authors welcome comments and suggestions to improve this publication and others in the series. Call AGB publications at 800/356-6317 or visit our Web site at http://www.agb.org for more information.

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